U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Attention: **Emergency Solutions Grant Program Recipients**
Continuum of Care Program Recipients

Housing Provisions of the Violence Against Women Act Reauthorization Act of 2022

The Violence Against Women Act ("VAWA") is a federal law that protects individuals who are survivors of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, sexual orientation, or gender identity. VAWA includes protections for survivors who are applying for or residing in covered housing programs.[1] On March 15, 2022, President Biden signed into law the Consolidated Appropriations Act of 2022,[2] which included the Violence Against Women Act Reauthorization Act of 2022 ("VAWA 2022"). VAWA 2022 reauthorizes, amends, and strengthens VAWA. Many of VAWA's amendments took effect on October 1, 2022.

On January 4, 2023, the U.S. Department of Housing and Urban Development ("HUD") published a notice in the Federal Register ("VAWA 2022 Notice") in which HUD: (1) described how the VAWA 2022 amendments affect HUD's programs; and (2) sought public comment through March 6, 2023 on certain provisions, to aid HUD in the development of regulations and program guidance. A copy of the VAWA 2022 Notice is available online at: https://www.federalregister.gov/documents/2023/01/04/2022-28073/the-violence-against-women-act-reauthorization-act-of-2022-overview-of-applicability-to-hud-programs.

This letter summarizes the key changes to the law that are relevant to covered housing providers.[3]

VAWA 2022 added to, and did not replace, the existing VAWA housing protections for survivors. Therefore, you, as a covered housing provider administering one or more covered housing programs, must continue to provide VAWA protections as provided by law.[4] To the extent you do not already have VAWA policies in place, you should implement changes immediately. HUD will also publish regulations and provide further guidance to inform you and other covered housing providers about complying with VAWA 2022.

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[1] *See* the Violence Against Women Act of 1994, as amended (34 U.S.C. 12291 *et seq.*). A list of HUD programs that are covered under VAWA can be found at 34 U.S.C. § 12491(a)(3).
[2] Public Law 117-103, https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf.
[3] See the VAWA 2022 Notice for more information about VAWA amendments and HUD's programs.
[4] *See* 34 U.S.C. 12491, 24 C.F.R. part 5, subpart L, and 24 CFR part 576.409 (ESG) and part 578.99(j) (CoC program). To review HUD's existing guidance on these requirements, please see Federal Register :: The Violence Against Women Act Reauthorization Act of 2022: Overview of Applicability to HUD Programs

What Key Changes to HUD's Housing Programs Does VAWA 2022 Make?

Definitions

For purposes of VAWA grants, VAWA 2022 revises the definition of "domestic violence" and adds the definitions of "economic abuse" and "technological abuse." HUD interprets its current regulatory definitions of "domestic violence" and "stalking" to include what is covered in these revised and new statutory definitions. Therefore, you and other covered housing providers are advised to apply HUD's VAWA requirements in a manner consistent with the following definitions.

> "DOMESTIC VIOLENCE. –The term 'domestic violence' includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—
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> (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
> (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
> (C) shares a child in common with the victim; or
> (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction."[5]

> "ECONOMIC ABUSE.—The term 'economic abuse', in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—(A) restrict a person's access to money, assets, credit, or financial information; (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty."[6]

> "TECHNOLOGICAL ABUSE.—The term 'technological abuse' means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies."[7]

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[5] 34 U.S.C. 12291(a)(12).
[6] 34 U.S.C. 12291(a)(13).
[7] 34 U.S.C. 12291(a)(40).

Covered Housing Programs

VAWA 2022 adds HUD's Section 202 Direct Loan and Housing Trust Fund[8] programs to the list of HUD's housing programs covered by VAWA. VAWA applies to the following HUD housing programs:[9]

- Public Housing;
- Housing Choice Voucher;
- Project-based Section 8 and Section 8 Moderate Rehabilitation Single Room Occupancy;
- Section 202 Supportive Housing for the Elderly, including Section 202 Direct Loan;
- Section 811 Supportive Housing for Persons with Disabilities;
- Housing Opportunities for Persons with AIDS (HOPWA);
- HOME Investment Partnerships (HOME);
- **Emergency Solutions Grants and Continuum of Care program;**
- Multifamily rental housing under Section 221(d)(3) of the National Housing Act with a below-market interest rate (BMIR) pursuant to Section 221(d)(5);
- Multifamily rental housing under Section 236 of the National Housing Act; and
- Housing Trust Fund program.

Furthermore, consistent with VAWA 2022,[10] HUD will issue regulations, notices, and/or other documents to identify when VAWA applies to additional HUD housing programs. HUD offices that previously issued notices with lists of covered housing programs will issue new notices with revised lists.

Compliance Review Processes:

VAWA 2022 includes a new section that requires HUD and other covered agencies to establish a compliance review process.[11] The section requires HUD to incorporate this process into its existing compliance review processes where possible, enumerates six items for compliance review,[12] requires HUD to conduct the review on a regular basis, and requires HUD to publicly disclose its assessment of the information collected during the compliance review process.

VAWA 2022 also requires HUD to develop and issue regulations in consultation with "appropriate stakeholders"[13] to implement these changes related to compliance review no

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[8] When HUD issued regulations in 2016 to implement the 2013 VAWA reauthorization, HUD included the Housing Trust Fund in its regulatory definition of "covered housing program" by using its general rulemaking authority.

[9] 34 U.S.C. 12491(a)(3).

[10] *See* 34 U.S.C. 12491(a)(3)(P).

[11] 34 U.S.C. 12492.

[12] The six items for compliance review are:

1. compliance with requirements prohibiting the denial of assistance, tenancy, or occupancy rights on the basis of domestic violence, dating violence, sexual assault, or stalking;
2. compliance with confidentiality provisions set forth in 34 U.S.C. 12491(c)(4);
3. compliance with the notification requirements set forth in 34 U.S.C. 12491(d)(2);
4. compliance with the provisions for accepting documentation set forth in 34 U.S.C. 12491(c);
5. compliance with emergency transfer requirements set forth in 34 U.S.C. 12491(e); and
6. compliance with the prohibition on retaliation set forth in 34 U.S.C. 12494. 34 U.S.C. 12492(a)(1)(B).

[13] "Appropriate stakeholders" include, but are not limited to, "(A) individuals and organizations with expertise in the housing needs and experiences of victims of domestic violence, dating violence, sexual assault and stalking; and (B) individuals and organizations with expertise in the administration or management of covered housing programs, including industry stakeholders and public housing agencies." 34 U.S.C. 12492(b)(2).

later than March 15, 2024. These implementing regulations must define standards of compliance under HUD's covered housing programs and include detailed reporting requirements, including reporting on emergency transfers, and include standards for corrective action plans where compliance standards have not been met.

Furthermore, to the extent possible, HUD will identify existing compliance review procedures that could be used for such reviews, including those currently administered by the Office of Fair Housing and Equal Opportunity. *See* Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA) (Jan. 20, 2023), available at https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO-2023-01-%20FHEO%20VAWA%20Notice.pdf.

Prohibition on Retaliation

VAWA 2022 adds a new section to VAWA, which prohibits retaliation in covered housing.[14] Under the new section, it is illegal for a public housing agency (PHA) or owner or manager of covered housing to discriminate against any person because that person has opposed any act or practice made unlawful by VAWA's housing provisions, or because that person testified, assisted, or participated in any related matter.

The new section also provides that it is illegal for a PHA or owner or manager of covered housing to coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA's housing provisions.

HUD will implement this new section through rulemaking. HUD plans to issue guidance to help answer questions from grantees and Federal financial assistance recipients on this process. In the meantime, grantees, public housing agencies, owners, and managers of housing covered by VAWA 2022 should ensure that their policies and practices include the statutory non-retaliation requirement and prohibition on coercion.

Right to Report Crime and Emergencies

VAWA 2022 adds a new section to VAWA, which protects the right to report crime and emergencies from one's home.[15] The new section provides that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. This section also prohibits penalizing or threatening to penalize[16] persons because they

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[14] 34 U.S.C. 12494.

[15] 34 U.S.C. 12495. Furthermore, in 2016, HUD issued guidance on applying the Fair Housing Act to local nuisance or crime-free ordinances that discriminate because of a protected characteristic. The guidance outlines how a local government may violate the Fair Housing Act by enforcing nuisance or crime-free ordinances in a manner that is intentionally discriminatory or results in an unjustified discriminatory effect. HUD will continue enforcement under the Fair Housing Act and other applicable civil rights authorities, including Title VI and Section 504, for any violation committed by a local government for enforcing nuisance or crime-free ordinances, which may additionally violate VAWA's Right to Report Crime and Emergencies provision. *See Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services*, September 13, 2016, https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF

[16] Penalties prohibited include (1) actual or threatened assessment of monetary or criminal penalties, fines, or fees; (2) actual or threatened eviction; (3) actual or threatened refusal to rent or renew tenancy; (4) actual or threatened refusal to issue an occupancy permit or landlord permit; and (5) actual or

request assistance or report criminal activity of which they are a victim or otherwise not at fault under the laws or policies adopted or enforced by "covered governmental entities." [17]

This provision further requires that covered governmental entities report on their laws or policies, or their subgrantees' laws or policies, that penalize protected persons based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property.[18] These entities must also certify compliance with these protections or explain how they will come into compliance or ensure compliance among subgrantees within 180 days of submitting the report to HUD.

HUD will issue guidance and help answer questions from grantees and Federal financial assistance recipients on this process. HUD also anticipates issuing implementing regulations or guidance, to include any costs of conforming to the requirements that may be allowable under HUD programs affected by this provision, including the CDBG program. HUD will issue guidance regarding the timing and process of this reporting. The law, however, became effective on October 1, 2022, so covered governmental entities are advised not to engage in any practices that violate the right to report provided for in Section 603 of VAWA 2022. Furthermore, covered governmental entities should update applicable policies and practices to include the statutory right to report to avoid potential liability under the law.

New Enforcement Authority

VAWA 2022 provides that HUD and the Department of Justice shall implement and enforce VAWA consistent with, and in a manner that provides, the same rights and remedies as those provided for the Fair Housing Act. HUD's Offices of Fair Housing and Equal Opportunity ("FHEO") and General Counsel ("OGC") will enforce VAWA 2022 using existing Fair Housing Act complaint process. A Notice describing this process is available at https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO-2023-01-%20FHEO%20VAWA%20Notice.pdf.

Changes to the McKinney-Vento Homeless Assistance Act Definition of Homelessness

For purposes of programs such as the Emergency Solutions Grants and Continuum of Care Programs, VAWA 2022 amended Section 103(b) of the McKinney-Vento Homeless Assistance Act to require HUD to consider homeless any individual or family who—

- (1) is experiencing trauma or a lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous, traumatic, or life-threatening conditions related to the violence against the individual or a family member in the individual's or family's current housing situation, including where the health and safety of children are jeopardized.
- (2) has no other safe residence; and

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threatened closure of the property, or designation of the property as a nuisance or a similarly negative designation. 34 U.S.C. 12495(b)(2).

[17] This means any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974.

[18] 34 U.S.C. 12495(c).

- (3) lacks the resources to obtain other safe permanent housing.

Rulemaking will be necessary to require Emergency Solutions Grants (ESG) recipients and subrecipients, Continuums of Care (CoC) and CoC Program recipients and subrecipients to make corresponding changes to the applicable written standards, coordinated entry policies, and documentation policies used to qualify individual and families as homeless under the CoC Program. That said, because HUD must recognize as "homeless" families and individuals who meet the new statutory criteria as of October 1, 2022, ESG and CoC recipients may implement the new definition prior to HUD rulemaking, provided that ESG recipients and CoCs update their relevant written standards and policies as needed to reflect the new statutory criteria.

Gender-Based Violence Prevention Office and VAWA Director

As required by VAWA 2022, HUD's Secretary will establish a Gender-based Violence Prevention Office with a VAWA Director at the Agency.[19] VAWA 2022 requires that the VAWA Director support implementation of VAWA's housing provisions; coordinate with other federal agencies and with state and local governments; ensure the provision of technical assistance and support for agencies and housing providers; implement internal systems to track, monitor, and address compliance failures; and address the housing needs and barriers faced by persons who are survivors of sexual assault, sexual coercion or sexual harassment by a public housing agency, owner, or manager of housing assisted under a covered housing program.

CoC Program Eligible Activities

VAWA 2022 amends section 423(a) of the McKinney-Vento Homeless Assistance Act to add the following expressly eligible CoC Program activity: "(13) Facilitating and coordinating activities to ensure compliance with [the emergency transfer plan requirement in 34 U.S.C. 12491(e)] and monitoring compliance with the confidentiality protections of [the confidentiality requirement in 34 U.S.C. 12491(c)(4)]."

HUD will make a conforming change to the CoC program regulations at 24 CFR part 578 to add this new activity. Prior to VAWA 2022, CoC grantees were able to use their administrative funds to pay for the facilitation and coordination of activities to ensure compliance with implementing emergency transfer plans. Because this new eligible activity category is distinct from the eligible activity categories that authorize and limit the use of CoC Program funds for "payment of administrative costs" under section 423(a)(10), (11), and (12) of the McKinney-Vento Homeless Assistance Act, HUD does not consider this new activity category to be subject to the CoC Program's spending caps on administrative costs.

VAWA Training and Technical Assistance

VAWA 2022 authorizes HUD with FY 2023-27 funding for training and technical assistance to support VAWA implementation, including technical assistance agreements with

[19] 34 U.S.C. 12493.

entities whose primary purpose and expertise are assisting survivors of sexual assault and domestic violence or providing culturally specific services to survivors of domestic violence, dating violence, sexual assault, and stalking.[20]

Study on Housing and Service Needs of Survivors of Trafficking

As required by VAWA 2022, HUD has begun a study of the availability and accessibility of housing and services for survivors of trafficking or those at risk of being trafficked, who are experiencing homelessness or housing instability. VAWA 2022 outlines the key requirements for the study, a definition for the terms "survivor of a severe form of trafficking" and "survivor of trafficking," the requirements for coordination and consultation while conducting the study, and the contents of the study. HUD has embarked on this study, which is due to Congress by September 2023.

VAWA Forms

You should be aware that HUD's VAWA forms are currently undergoing revision and renewal:[21]

- **Form HUD-5380**, Notice of Occupancy Rights under VAWA
- **Form HUD-5381**, Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking
- **Form HUD-5382**, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation
- **Form HUD-5383,** Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

[20] 34 U.S.C. 12496.

[21] HUD is developing updated forms and published a Notice of Proposed Information Collection. The comment period closed on January 3, 2023 and the notice and submitted comments are available at https://www.govinfo.gov/content/pkg/FR-2022-11-04/pdf/2022-24070.pdf. The existing forms are available at https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4.

Who do I contact if I have VAWA questions?

For more information, please visit www.hud.gov/vawa. If you have questions, you can submit a question to the Ask A Question on the HUD Exchange, a HUD-funded information portal that provides technical assistance to ESG and CoC program recipients and other HUD program partners. The Ask A Question portal is located at https://www.hudexchange.info/program-support/my-question/. Please be sure to select the grant program you receive (CoC or ESG) and identify the subject as VAWA.

Sincerely,

Jemine A. Bryon

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